

customer relationship is not at the customer's election if you acquire a customer's deposit liability or the servicing rights to a customer's loan from another financial institution and the customer does not have a choice about your acquisition.

(B) In the case of financial institutions described in §1016.3(1)(3), establishing a customer relationship is not at the customer's election if you acquire a customer's loan or the servicing rights from another financial institution and the customer does not have a choice about your acquisition.

(C) In the case of credit unions, establishing a customer relationship is not at the customer's election if you acquire a customer's deposit liability from another financial institution and the customer does not have a choice about your acquisition.

(ii) *Substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction when:

(A) You and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the financial product or service; or

(B) You establish a customer relationship with an individual under a program authorized by title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) or similar student loan programs where loan proceeds are disbursed promptly without prior communication between you and the customer.

(iii) *No substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at your office or through other means by which the customer may view the notice, such as on a Web site.

(f) *Delivery.* When you are required to deliver an initial privacy notice by this section, you must deliver it according to §1016.9 of this part. If you use a short-form initial notice for non-customers according to §1016.6(d) of this part, you may deliver your privacy notice according to §1016.6(d)(3).

§ 1016.5 Annual privacy notice to customers required.

(a)(1) *General rule.* You must provide a clear and conspicuous notice to customers that accurately reflects your privacy policies and practices not less than annually during the continuation of the customer relationship. *Annually* means at least once in any period of 12 consecutive months during which that relationship exists. You may define the 12-consecutive-month period, but you must apply it to the customer on a consistent basis.

(2) *Example.* You provide a notice annually if you define the 12-consecutive-month period as a calendar year and provide the annual notice to the customer once in each calendar year following the calendar year in which you provided the initial notice. For example, if a customer opens an account on any day of year 1, you must provide an annual notice to that customer by December 31 of year 2.

(b)(1) *Termination of customer relationship.* You are not required to provide an annual notice to a former customer.

(2) *Examples in the case of financial institutions other than credit unions and covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (b)(2), "you" is limited to financial institutions other than credit unions and financial institutions described in §1016.3(1)(3). Your customer becomes a former customer when:

(i) In the case of a deposit account, the account is inactive under your policies;

(ii) In the case of a closed-end loan, the customer pays the loan in full, you charge off the loan, or you sell the loan without retaining servicing rights;

(iii) In the case of a credit card relationship or other open-end credit relationship, you no longer provide any statements or notices to the customer concerning that relationship or you sell the credit card receivables without retaining servicing rights; or

(iv) You have not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

(3) *Examples in the case of covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph

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(b)(3), “you” is limited to financial institutions described in §1016.3(1)(3) of this part. Your customer becomes a former customer when:

(i) In the case of a closed-end loan, the customer pays the loan in full, you charge off the loan, or you sell the loan without retaining servicing rights;

(ii) In the case of a credit card relationship or other open-end credit relationship, you sell the receivables without retaining servicing rights;

(iii) In the case of credit counseling services, the customer has failed to make required payments under a debt management plan, has been notified that the plan is terminated, and you no longer provide any statements or notices to the customer concerning that relationship;

(iv) In the case of mortgage or vehicle loan brokering services, your customer has obtained a loan through you (and you no longer provide any statements or notices to the customer concerning that relationship), or has ceased using your services for such purposes;

(v) In the case of tax preparation services, you have provided and received payment for the service and no longer provide any statements or notices to the customer concerning that relationship;

(vi) In the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, you have received payment, or you have completed all of your responsibilities with respect to the settlement, including filing documents on the public record, whichever is later; or

(vii) In cases where there is no definitive time at which the customer relationship has terminated, you have not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

(4) *Examples in the case of a credit union.* An individual becomes a former customer of a credit union when:

(i) The individual is no longer the credit union’s member as defined in the credit union’s bylaws;

(ii) In the case of a nonmember’s share or share draft account, the ac-

count is inactive under the credit union’s policies;

(iii) In the case of a nonmember’s closed-end loan, the loan is paid in full, the credit union charges off the loan, or the credit union sells the loan without retaining servicing rights;

(iii) In the case of a credit card relationship or other open-end credit relationship with a nonmember, the credit union no longer provides any statements or notices to the nonmember concerning that relationship, or the credit union sells the credit card receivables without retaining servicing rights; or

(v) The credit union has not communicated with the nonmember about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

(c) *Special rule for loans in the case of a financial institution other than a credit union.* If a financial institution other than a credit union does not have a customer relationship with a consumer under the special rule for loans in §1016.4(c)(2) of this part, then it need not provide an annual notice to that consumer under this section.

(d) *Delivery.* When you are required to deliver an annual privacy notice by this section, you must deliver it according to §1016.9 of this part.

§ 1016.6 Information to be included in privacy notices.

(a) *General rule.* The initial, annual, and revised privacy notices that you provide under §§1016.4, 1016.5, and 1016.8 of this part must include each of the following items of information, in addition to any other information you wish to provide, that applies to you and to the consumers to whom you send your privacy notice:

(1) The categories of nonpublic personal information that you collect;

(2) The categories of nonpublic personal information that you disclose;

(3) The categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information, other than those parties to whom you disclose information under §§1016.14 and 1016.15 of this part;

(4) The categories of nonpublic personal information about your former